

**Submitted Statement of Neil Milner
President and CEO of
The Conference of State Bank Supervisors**

**Before the
Subcommittee on Financial Institutions and Consumer Credit
House Committee on Financial Services**

May 2, 2001

Chairman Bachus, Representative Waters and Members of the Subcommittee, I am Neil Milner, President and CEO of the Conference of State Bank Supervisors (CSBS). CSBS is the professional association of state officials who charter, regulate and supervise the nation's nearly 7,000 state-chartered banks.

Mr. Chairman and Representative Waters, CSBS applauds your appropriate review of the implementation of the Gramm-Leach-Bliley Act (GLBA). We are submitting this statement to present our views on the Federal Reserve's and the Treasury Department's proposed rulemaking to allow Financial Holding Companies and Financial Subsidiaries to offer real estate brokerage and real estate management services.

The state bank supervisors, based on their experience in supervising institutions that have engaged in real estate brokerage, are generally supportive of

the federal proposed rulemaking. Attached is our letter to the Federal Reserve and Treasury commenting on their proposal.

As you may know, presently 25 states and the District of Columbia allow their state-chartered banks to conduct real estate brokerage (see attached chart). In a number of states this activity has been allowed for ten to twenty years. In one state, North Carolina, the activity has been allowable for over one hundred years.

The states have always been permitted to authorize powers for the institutions they charter. The importance of this authority to our nation's economic development and the banking system was acknowledged in the 1991 Federal Deposit Insurance Corporation Improvement Act (FDICIA) and reaffirmed by GLBA. As detailed by both of those laws, state banks are allowed to engage in agency activities as permitted by their states and state bank supervisors, and principal activities, beyond those allowable for a national bank, are allowed with the review of the FDIC.

For years prior to the passage of GLBA, state banks conducted many non-banking or banking related activities, within the bounds of safety and soundness as determined by their state supervisors. These activities have primarily been in the area of agency and brokerage: insurance sales, sales of uninsured investment products, travel agency and real estate brokerage. While the states are often

referred to as the “laboratories for innovation” for our banking system, it is the evolution of these agency and brokerage services as permissible bank activities that truly embodies this concept.

The ability for state banks to test new products, services, powers and structures on a state-by-state basis, prior to issuing a broad grant of authority to institutions nationwide, has identified best practices for the delivery of financial services that has then been available to federally chartered institutions. This has proved to be a very appropriate and effective model for protecting the safety and soundness, as well as innovation of our banking system. We believe the Federal Reserve’s and Treasury’s interpretation of real estate brokerage as an appropriate activity for banks is supported by the experience of the states.

Again, thank your for the opportunity to submit testimony on this important subject. We would be happy to answer any additional questions the Committee might have.



May 1, 2001

Ms. Jennifer J. Johnson
Secretary to the Board
Board of Governors of the
Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

Real Estate Brokerage and Management Regulation
Office of Financial Institution Policy
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Room SC 37
Washington, DC 20220

**Re: Permissible Activities for Financial Holding Companies and Financial
Subsidiaries: Docket No. R-1091 (66 FR 307)**

Dear Ms. Johnson and Sir or Madam:

CSBS is pleased to have the opportunity to respond to the Board of Governors of the Federal Reserve System's ("Board's") and the Secretary of the Treasury's ("Treasury's") proposal¹ seeking comment on whether to determine that real estate brokerage and real estate management are activities that are financial in nature or incidental to a financial activity pursuant to Section 103(a) of the Gramm-Leach Bliley Act ("GLBA").² CSBS is the national organization of state officials responsible for chartering, regulating and supervising the nation's 6,868 state-chartered commercial and savings banks and 419 state-licensed branches and agencies of foreign banks.

State Regulator Perspective

The real estate market comprises a broad range of activities such as real estate financing, appraisal, escrow and settlement services, and is a familiar environment for banks of all charter types. However, the Board and Treasury proposal specifically highlights the perspective of the state banking system because some states currently permit their state-chartered banks to engage in real estate brokerage or management activities. For

¹ 66 Fed. Reg. 307-314, (Jan. 3, 2001).

² Pub. L. 106-102, 113 Stat. 1338 (Nov. 12, 1999).

example, at least 25 states and the District of Columbia permit their state-chartered banks to engage in real estate brokerage activities.

The state perspective on real estate brokerage activities is particularly germane because of the many years such activities have been permissible. In at least one state, it has been a permissible activity for more than a century. Notwithstanding its permissibility however, relatively few institutions are actively engaged in real estate brokerage. Furthermore, it is telling that state bank supervisors have not encountered any significant safety and soundness concerns with respect to the manner in which institutions are conducting these activities.

Based on this experience, we generally support a determination by the Board and Treasury that would consider real estate brokerage and real estate management activities to be financial in nature or incidental to a financial activity. We qualify this support, however, with the stipulation that such activities should be conducted pursuant to applicable state laws and prudential operational safeguards. In this context, we believe that consumers will ultimately benefit from enhanced competition derived from additional providers in real estate services.

Consumer Protection

We commend the Board and Treasury for diligently exploring the potential consumer protection issues raised by permitting banks to engage in real estate brokerage and management activities. For example, the Board and Treasury solicit comment on whether to establish specific restrictions on transactions or relationships between a real estate broker and its affiliated depository institution.³ The states that permit state-chartered banks to conduct such activities have not encountered patterns of consumer abuse in this area.

Conclusion

Based on the experience of states that permit real estate brokerage and management activities, we believe that it is appropriate for the activities discussed in the Board and Treasury's proposal to be considered financial in nature or incidental to a financial activity,⁴ so long as they are conducted pursuant to applicable state laws and prudential operational safeguards. Thank you for this opportunity to comment. Please call on us if you have any questions or if we can provide additional assistance.

Best Personal Regards,



Neil Milner
President and CEO

³ 66 Fed. Reg. 310, (Jan. 3, 2001).

⁴ As those terms are defined in Section 103(a) of the GLBA.



Real Estate Brokerage

State	Available	Subsidiary Required	Authorization	Citation
Alabama	Yes	No	Statute	5-5A-18
Alaska	No	No	Statute	AS 06.05.272(d)
Arizona	Yes	Yes	Statute	ARS 6-184(A)(7)
Arkansas	No	No	Not Authorized	NA
California	Yes	No	Statute	Cal. Corps. C. Sec. 206 and Cal. Fin. C. Sec. 751.3
Colorado	No	No	Not Authorized	N/A
Connecticut	Yes ¹	Yes ¹	See Footnote ¹	See Footnote ¹
Delaware	Yes	Yes	Statute	Title Five, Delaware Code § 761(a)(3)
DC	Yes ²	NR	NR	NR
Florida	Yes	Yes	Statute	658.67(6), F.S.
Georgia	Yes	No	Statute & Regulation	7-1-261, operational powers of banks; Regulation 80-5-5
Guam				
Hawaii	No ³	No	Wildcard	NR
Idaho	Yes	No	Wildcard	NR
Illinois	No	No	Not Authorized	N/A – Express prohibition exists within IL wildcard statute that grants parity with federal thrifts, among other entities
Indiana	Yes	No	Statute	I.C. 28-1-3.1
Iowa	Yes	No	Statute	Section 524.802
Kansas	No	No	Not Authorized	N/A
Kentucky	No	No	Not Authorized	N/A
Louisiana	No	No	Not Authorized	N/A
Maine	Yes ⁴	No	Regulation	Maine 9B Section 131(6-A); 9B Section 446-A; Regulation #7
Maryland	No	No	Not Authorized	N/A
Massachusetts	Yes	Yes	Statute	G.L.c.167F §2 p. 25
Michigan	Yes	No	Statute	MCL 487.14104(1)
Minnesota	No	No	Statute is Silent	N/A
Mississippi	No	No	Not Authorized	N/A
Missouri	No ⁵	No	Not Authorized	N/A
Montana	No	No	Not Authorized	N/A
Nebraska	Yes	No	Incidental Powers Regulation	Department Statement of Policy #9
Nevada	No	No	Not Authorized	N/A
New Hampshire	Yes ⁶	No	Regulation & Wildcard	Ban 525, Federal Savings Associations Powers
New Jersey	Yes	No	Regulation	NJAC 3:11-11.5(a)(4)



Real Estate Brokerage

State	Available		Subsidiary Required		Authorization	Citation
New Mexico	Yes		No		Wildcard	58-1-54
New York	No		No		Not Authorized	N/A
North Carolina	Yes		Yes		Statute	NCGS 53-47c(3)
North Dakota	No		No		Not Authorized	N/A
Ohio	No		No		Not Authorized	N/A
Oklahoma	No		No		Not Authorized	N/A
Oregon	No		No		Not Authorized	N/A
Pennsylvania	Yes		No		Parity Statute	7P.S. §201
Puerto Rico	No		No		Not Authorized	N/A
Rhode Island	No		No		Not Authorized	N/A
South Dakota	Yes		No		Interpretation	51-A-2-14(3)
Tennessee	Yes		No		Statute, Regulation & Wildcard	T.C.A. § 45-2-607(d); Regulation Chpt. 0180-19; 45-14-105
Texas	Yes		No- Preferred		Statute	Texas Real Estate License Act
Utah	No		No		Not Authorized	N/A
Vermont	No		No		Not Authorized	N/A
Virginia	No		No		Not Authorized	N/A
Washington	Yes ⁷		No		Wildcard Authority	RCW 30.04.127
West Virginia	No		No		Not Authorized	N/A
Wisconsin	Yes		No		Statute & Regulation	221.0322 & DFI -Bkg#16
Wyoming	Yes		No		Statute	W.S.13-2-101(a)(xiii) & W.S.13-2-101(a)(xii)
SUMMARY	Yes	No	Yes	No		
	26	25	6	45		

NR: Not Reported.

N/A: Not Applicable.

¹ The activity is permissible through a subsidiary. It may also be conducted directly under the authority provided by the "closely related activities" statute [Sect 36a-250(a)(40) of CT General Statutes] or "wild card" statute [Sect. 36a-250(a)(41) of the CT General Statutes]. To date, The Department has not formally acted on any request to conduct the activity.

² The DC Office of Banking & Financial Institutions is presently modernizing its bank, mortgage banking, trusts, savings and loan, and credit union statutes, regulations and chartering requirements.

³ Real estate brokerage is expressly prohibited by state law, unless otherwise allowed through wildcard authority because the activity is permissible for national banks.



⁴ The Department would review on a case-by-case basis and refer to Sections 416 and 419-A of the Maine Banking Statute, together with Regulation 7.

⁵ Depository Trust Companies have real estate brokerage powers under 362.105

⁶ Effective March 16, 2001, Ban 525 allows commercial banks, trust institutions and savings banks to engage in activities and make any investment in the same manner and to the same extent that the activity is permissible for federal savings associations.

⁷ See also the following: Pursuant to RCW 30.04.215(3), 32.08.140(16) and 32.08.146, banks can perform the same activities federal banks can, provided that the activities are approved by the Director of the Department of Financial Institutions.

NOTE: The data included in this table is provided for information purposes only. It should not be construed to be legal guidance.